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TOWARDS EXIT AND VOICE: REDESIGNING TEMPORARY MIGRANT WORKERS' PROGRAMMES*

ABSTRACT

At the beginning of the 21st century, (TMWPs) have emerged and expanded in numerous advanced industrialised, liberal states. This paper probes into the most problematic restrictions of migrants' employment and social rights under such schemes in liberal democratic host states. In reviewing and critiquing a number of notable proposals for redesigning TMWPs, this paper puts forward the discourse of 'exit and voice' in migrants' work relations as a normative foundation for redesigning the key features of current TMWPs.

KEY WORDS: *Labour Migration Programmes, Migrant Workers' Rights, Temporary Labour Migration, Immigration and Labour Laws, Employment and Social Rights.*

RÉSUMÉ

Au début du 21^{ème} siècle, les TMWP (programmes pour les travailleurs migrants temporaires) ont été créés et se sont développés dans de nombreux États développés, libéraux et industrialisés. Cet article examine les restrictions les plus problématiques en matière d'emploi et de droits sociaux des migrants, dans des pays d'accueil démocratiques libéraux. En examinant et en critiquant un certain nombre de propositions en vue de la refonte des TMWP, cet article se fonde sur le compromis « Exit, Voice » dans les relations de travail des migrants pour envisager la refonte des principales caractéristiques des TMWP actuellement en cours.

MOTS CLÉS: *Main-d'œuvre migrante, migration temporaire, droit de l'immigration et du travail, emploi et droits sociaux, travailleurs immigrés.*

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The admission of temporary migrant workers has become an increasingly popular labour market instrument for industrialised countries, including countries that have traditionally emphasised permanent settlement¹. In seeking to differentiate contemporary TMWPs from the 'less humane' post-war guest worker schemes, advocates argue that 'carefully designed' schemes can be a 'triple-win' policy instrument². They argue that TMWPs can help to address economic and labour market needs of receiving countries while placating domestic political concerns over permanent migration. Sending countries can benefit from remittances and skills transfer of their nationals while mitigating the problem of 'brain drain'. For migrants and their families, TMWPs provide access employment opportunities abroad through legal channels. On the other hand, critics have highlighted the inherently exploitative nature of such schemes, which impose restrictions on migrants' employment and social rights and provide employers with additional means of control in and beyond the workplace³.

The different positions in this debate raise the question of the moral standing that ought to be given to migrants relative to countries of which they are not citizens. The paper begins with critiquing a relatively influential 'numbers versus rights' proposition, which suggests that there is a policy trade-off between the openness of a host state's immigration policy on the one hand and the rights granted to the migrants admitted on the other hand. I then examine some prominent proposals for 'improved' TMWPs that have been advanced by other scholars, especially the case for granting a small set of 'core' rights to migrants. The final part puts forward ideas for reforming the most problematic features of TMWPs, based on expanding the contours of exit and voice in these migrants' work relations and broader migration projects.

I - 'NUMBERS VERSUS RIGHTS'?

A major aspect of the 'triple-win' claims regarding TMWPs is the purported benefits arising from opportunities for migrants to access employment in high-income host states. Such arguments generally presume that most temporary migrants are often not seeking long-term membership of the host state, but merely access to its economic opportunities

- 1 Global Commission on International Migration (GCIM), *Migration in an Interconnected World: New Directions for Action*, Switzerland, GCIM, 2005, p. 16.
- 2 M. Ruhs, « The potential of temporary migration programmes in future international migration policy », *International Labour Review*, n°145, 2006, p. 7.
- 3 S. Castles, « Guestworkers in Europe: A Resurrection? », *International Migration Review*, vol. 40, 2006, p.741; C. Dauvergne and S. Marsden, « The Ideology of Temporary Labour Migration in the Post-Global Era », *Citizenship Studies*, vol.18, 2014, p.224; B. Anderson, « Migration, immigration controls and the fashioning of precarious workers », *Work, Employment and Society*, vol. 24, 2010, p. 300; J. Fudge, « Precarious Migrant Status and Precarious Employment: The Paradox of International Rights for Migrant Workers », *Comparative Labour Law and Policy Journal*, vol. 34(1), 2012, p. 96.

so as to 'improve their lives' upon returning home⁴. Advocates of contemporary TMWPs argue that such schemes expand the legal channels for global labour migration in the face of strong push and pull factors. Without these avenues, it is claimed that migrants can be pushed into informal and less regulated sectors of the labour market where they are more vulnerable to exploitation⁵. As Pevnick points out:

It is unlikely that foreign workers would prefer a system that promised full legal rights, but accepted very few (thus ushering many into illegal immigration) to a relatively humane guestworker program that allowed entry for enough to satiate labour demand⁶.

TMWPs are thus considered as a 'second-best' policy in contrast to the 'politically unfeasible' alternative of granting migrants permanent residence. Arguments supporting the expansion of TMWPs give considerable weight to the proposition of a 'numbers versus rights' trade-off. In his analysis of TMWPs in over 50 high-income countries, Ruhs finds that the more 'open' the admission policy (such as granting entry to larger numbers of migrants), the more restricted the bundle of rights that are granted to migrants admitted; and vice versa. He maintains that migrants' rights not only have an intrinsic value as underlined by human rights approaches, but also an instrumental role in shaping the effects of labour migration for receiving states, sending states, and migrants themselves. For Ruhs, the rights granted to migrants are based on policymakers' assessment of the costs and benefits for the population in the receiving country⁷. He cautiously acknowledges the moral weight of human rights, but argues that rights rationales often fail to consider the economic welfare benefits for migrants, mainly the interests of future migrants in seeking access to the labour markets of high-income countries. The 'price' of granting more rights and/or insisting on equal rights (as citizens) for existing migrants is likely to be restrictive admission policies towards future migrants.

However, it is foreseeable that this line of argumentation can be misused to justify the deprivation of virtually all rights of migrants that entail some kind of cost. The 'numbers versus rights' trade-off can pose normative dilemmas for liberal democratic states that are committed to basic principles of human rights and moral equality. Ruhs has attempted to clarify that although 'some rights generate costs', this 'does not mean that there is a moral justification for condoning or even advocating for such restrictions'⁸. Yet the 'price' of rights seems to imply that certain regulatory goals such as economic efficiency ought to be prioritised over others. Such a narrative can diminish the intrinsic moral legitimacy and weight of human rights and their key principles of universality, alienability, and indivisibility. Castles has rightly raised the normative question of whether it is acceptable to trade off workers' rights for economic gains⁹.

4 D. Bell, « Justice for Migrant Workers? Foreign Domestic Workers in Hong Kong and Singapore » in Sor-hoon Tan (dir.), *Challenging Citizenship: Group Membership and Cultural Identity in a Global Age*, Surrey and Burlington, Ashgate 2005.

5 GCIM, *Migration in an Interconnected World* (n 1).

6 R. Pevnick, *Immigration and the Constraints of Justice*, CUP 2011, 179.

7 Ruhs, *Price of Rights* (n 4), p.13.

8 *Ibid.*, 4.

9 Castles, « Guestworkers in Europe: A Resurrection? » (n 3) 749.

Instances of labour migration policies that concurrently restrict migrants' rights and the numbers of migrants admitted are not uncommon in numerous liberal states such as the UK in recent times. Ruhs' analysis has also been largely limited to examining 'rights on paper'. Although he acknowledged that 'in theory, migrants can be denied some rights that exist in law'¹⁰, Ruhs' inquiry stops short at examining 'rights in practice'. Notably, there has been insufficient attention in his inquiry to the role of these migrants' precarious legal statuses in undermining the enforcement of their employment rights in practice.

II - REDESIGNING TMWPS

Various proposals for re-designing contemporary TMWPs have been put forward. These proposals, which are examined here, share a common thread of granting some rights to migrants under TMWPs while restricting a range of other rights. However, the proposals are different in their premises for identifying and justifying exactly what those rights ought to be.

Ruhs' response to tolerating certain restrictions of rights in exchange for migrants' access to the host state's labour market is premised on granting a set of 'core' rights for migrants under TMWPs¹¹. His starting point is that migrants' basic civil and political rights (except for the right to vote) must not be restricted under any scheme. Other rights can be restricted if those rights are shown, based on evidence, to create net costs for host states. He argues that there is a strong case for limiting restrictions to those already in practice in democratic high-income states, which include: the right to free choice of employment, select social rights, the right to family reunion, and the right to access permanent residence.

Pevnick also advances a 'core' set of basic rights under an ethically acceptable guest worker scheme, which would allow migrants to work for different employers and protect their basic employment rights. In regards to rights that can be excluded or restricted, he submits that there would be '(a) no promise of future access to citizenship; (b) no access to membership services (such as social security); and (c) no access for their families'¹². Pevnick argues that these restrictions are warranted since otherwise such programmes would not be pursued at all.

Ruhs' and Pevnick's distinction between core and non-core rights for migrants under TMWPs runs the risk of falling into the trap of reinforcing the demarcation of civil and political rights from social and economic rights in a hierarchy that has prioritised civil and political rights. Moreover, any rationalisation for distinguishing between core and non-core rights would need to go beyond arguments based on the 'price' of rights. These proposals seem to be based on an instrumental view that the rights granted to migrants are shaped by cost-benefit considerations that 'depend on their impacts on the existing population in the host country'¹³. However, such arguments would have little appeal to those who underline the intrinsic value of human rights as well as the liberal state's commitment to universality, inalienability, and indivisibility of human rights.

10 Ruhs, *Price of Rights* (n 4) 12.

11 *Ibid.*

12 Pevnick, *Immigration and the Constraints of Justice* (n 7) 178.

13 Ruhs, *Price of Rights* (n 4) 13.

Recognising that liberal democracies are morally constrained in distinguishing between citizens and non-citizens in the allocation of legal rights, Carens has provided a more substantive normative account that identifies the circumstances in which liberal states may legitimately admit migrants for employment on a temporary basis and may impose certain rights restrictions. He accepts that a small handful of restrictions on social rights can be justified on the basis of the temporality of migrants' stay in the host state, with their claims to membership rights strengthening over time.

For Carens, the admission of temporary migrant workers with explicit restrictions on their right to stay in the host state would be morally permissible provided that these workers are actually present only for a short time. For persons admitted to work on a temporary visa 'who have no other moral claim to residence than their presence in the state'¹⁴, it would be reasonable to expect that they leave the host state after a year or two when their visa expires. However, for Carens, 'it is not acceptable to keep people in a temporary status which is constantly renewed, so that they actually stay for a long time but remain in a vulnerable and restricted situation'¹⁵.

Rather than promoting the extension of membership rights to temporary migrants, Ottonelli and Torresi call for the provision of substantial exit options at any stage of their migration projects. Viable exit measures can include: giving migrants the ability to change jobs and to return to their home state whenever they wish; enabling the transfer of social security payments to be used in their home state; allowing for frequent visits to and interactions with the home state¹⁶.

III - TOWARDS EXIT AND VOICE

Drawing on some of above insights, I put forward a discourse of 'exit and voice' as the normative grounding for addressing most problematic restrictions on migrants' rights under such schemes. Insights from Hirschman's 'Exit, Voice, and Loyalty'¹⁷ proposition have been applied to situations of dissatisfied workers who can respond through 'exiting' the employment relationship to seek better working conditions elsewhere, or through 'voice' mechanisms such as trade unionism and collective bargaining¹⁸. Voice and exit are commonly seen as trade-offs, where a lack of 'voice' can increase the likelihood for 'exit' and vice versa, as exemplified in Freeman's association of unionism with lower quit rates¹⁹.

In some situations, it can be said that workers are deprived of the possibility to resort to exit and voice mechanisms. According to Hirschman, initial high costs of entry and stiff penalties and sanctions for exit can diminish and repress the salience of both exit and

14 J. H. Carens, « Live-in Domestic, Seasonal Workers, and Others Hard to Locate on the Map of Democracy », *Journal of Political Philosophy*, vol. 16, 2008, p. 422.

15 J. Carens, « Who Belongs? Immigration, Democracy, and Citizenship » in O. Schmidtke and S. Ozcurumez (dir), *Of States, Rights, and Social Closure*, Palgrave Macmillan 2007, p. 17.

16 V. Ottonelli and T. Torresi, « Inclusivist Egalitarian Liberalism and Temporary Migration: A Dilemma », *Journal of Political Philosophy*, vol. 20, 2012, p. 220.

17 A. O. Hirschman, *Exit, Voice, and Loyalty*, Cambridge MA, Harvard University Press, 1970.

18 R. B. Freeman and J. L. Medoff, *What Do Unions Do?* New York, Basic Books, 1984.

19 R. B. Freeman, « The Exit-Voice Tradeoff in the Labor Market: Unionism, Job Tenure, Quits, and Separations », *The Quarterly Journal of Economics*, n°94, 1980, p. 643.

voice. Hirschman identifies these entry fees and exit penalties as devices for organisations to generate or reinforce the loyalty of consumers or employees. In other words, loyalty disrupts the functioning of exit and voice by causing consumers or employees to stay with an organisation²⁰. Entry costs can include the time, money, resources, and energy invested by the migrant, their family, and community to embark on the migration project. At the same time, there can be hefty penalties for exit. If a migrant under a TMWP quits their job with the employer, they could be subject to the adverse consequences of losing their legal authorisation to remain in the host state, including the risk of deportation. Other sanctions for exit may arise from repayment of large debts and the shame associated with returning home early.

Where the penalties for exit are hefty, voice mechanisms become all the more important for workers to protect their rights and advance their interests. Yet the power of exit or voice to effect change exists where the other option is possible. The tethering of migrants' legal status to an employer sponsorship under TMWPs can be perceived as imposing or mandating the 'loyalty' of highly immobile migrant workers through substantial entry fees and prohibitive exit penalties. The use of voice through resorting to individual and collective, formal and informal channels such as legal proceedings, collective bargaining, and internal grievance procedures, is undermined in these situations. Migrants may be reluctant to voice any discontent and complaint against their sponsor/employer where exit is not a viable possibility.

Expanding the contours for exit in migrants' work relations is essential for them to engage freely in the resident labour market as well as to facilitate their broader life plans emerging from their migration project. The possibility of exiting an employment relationship and/or a failing migration project for some migrant workers and their families can be fraught with practical constraints such as needing to pay off large amounts of debt incurred prior to and throughout their migratory journeys. This makes recourse to voice all the more important, particularly with respect to collective voice mechanisms of representation and mobilisation that are able to ameliorate the weaker bargaining power of an individual worker who has little or no possibility for exit. Voice also has both procedural and substantive elements. Access to effective voice mechanisms can provide a bulwark against exploitation through the collective empowerment and mobilisation of migrant workers under TMWPs alongside their counterparts with permanent residence and citizenship.

IV - PROPOSALS FOR EXIT AND VOICE

A – DETACHING RESIDENCE STATUS FROM EMPLOYER SPONSORSHIP

Essential to migrants' exercise of exit is the elimination of legal constraints on migrants' labour mobility, which would minimise the risk of beholden workers to a specific employer and employment relationship. Although TMWPs do not explicitly prevent migrants from changing employers, their legal authorisation to work and reside in the host state essentially hinges on a sponsorship arrangement with a specific employer or labour user.

Ruhs argues that the portability of work permits/visas between different employers could be acceptably limited for a short initial period (such as six months), otherwise it would

20 Hirschman (n 18) 93.

'substantially reduce the propensity of local employers to recruit migrant workers because the latter would be free to leave the employer who recruited them before at least part of that employer's recruitment costs have been recovered'²¹. Carens proposes that a period of three months would be the maximum for limiting migrants' freedom to change employers, so that any 'recruitment costs' may be recouped. Even with such a restriction, there ought to be an escape clause if the employer engages in abusive behaviour during this period²².

I would go further than the qualified conditions proposed by Ruhs and Carens. Without the freedom to exit any employment relationship at any time, a migrant can be vulnerable to severe forms of exploitation that ought not be accepted even for a 'short initial period'. While Carens proposes an escape clause, he does not make it clear how this actually would operate in practice. Such a clause seems to be aimed at responding to highly exploitative labour situations when they occur, rather than preventing the very source of migrants' vulnerability arising from these immigration restrictions. A reasonable response to the practical need for employers to recuperate their recruitment costs would be to reduce the visa application and administration costs for employers and migrant workers (which could reduce any potential debt incurred by migrants).

At the heart of my proposal is that the migrant's legal authorisation to work and reside in the host state ought to be detached from an employment contract with a specific sponsor. Migrants could be issued with a transferrable work permit that is not tied to a specific employer sponsorship but enables them to change employers and to search for alternative employment throughout the duration of the permit. Labour market intermediaries and government labour departments can play a constructive role in channelling information and resources to match migrants with jobs and employers in identified areas of labour shortages before and upon their arrival and during their residence in the host state.

New types of intermediaries such as the social enterprises identified by Forde and MacKenzie's study²³ can play a positive role in meeting the needs of migrant workers throughout their migration projects, such as facilitating post-admission labour market transitions under a redesigned TMWP where migrants' legal statuses are not tied to a specific employer sponsorship. A robust regulatory framework of registration and licensing, obligations and responsibilities, monitoring and enforcement can help to reduce the scope for exploitative practices of less scrupulous intermediaries.

B - OCCUPATIONAL AND SECTORAL MOBILITY AND 'SKILLS SHORTAGE'

A key rationale of TMWPs as policy instruments to address specific skill shortages has been used to justify the restrictions on migrants' free choice of employment under these schemes. Compared with the constraints on migrants' freedom to change employers, restrictions on labour mobility with respect to occupation and/or sector may be designed in a way that leaves workers with some recourse to exit and voice. The main proposal here is that migrants' choice of employment could arguably be limited to a defined list of demonstrable shortage occupations and sectors in the local labour market. Migrants' work

21 *Ibid.*, 175.

22 Carens, 'Live-in Domestic' (n 15) 433.

23 Ch. Forde and R. MacKenzie, « The Ethical Agendas of Employment Agencies Towards Migrant Workers in the UK: Deciphering the Codes », *Journal of Business Ethics*, vol. 97, 2010, p. 31.

permits would allow them to choose between and switch into any of the occupations on this list.

A rigorous policy tool to identify genuine shortages would be the use of an independent expert panel to compile and regularly update a shortage occupation list, with the active input of a range of stakeholders, including migrants and their organisations. For example, the Migration Advisory Committee (MAC) in the UK is an independent expert body that undertakes regular analyses of skilled shortages and advises the government on a range of appropriate policy responses to labour shortages that extend beyond labour migration. MAC draws on both 'top-down' labour market information as well as 'bottom-up' evidence from employers, business groups, trade unions, and government departments. Rather than simply rely on employer attestation that 'shortages' exist, this approach would be able to take into account broader labour market and economic factors as well as the interests of diverse labour market actors.

C – EMPLOYMENT PROTECTIONS AND COLLECTIVE ORGANISATION

In liberal democratic states, employment protection laws generally apply to temporary migrants (with lawful residence status) and permanent residents and citizens alike²⁴. The effective protection of migrants' labour rights requires disentangling their migrant status from the enforcement of employment laws. As a starting point, a model of TMWP that does not tie the migrant's employment and residence authorisation to a mandated employer sponsorship would alleviate fears of reprisal if migrants sought to bring claims against their employers for violations of these rights.

The enforcement of immigration controls is also a crucial source of practical barriers to migrants' access to employment protections. The core worker-protective function of labour inspections can be severely undermined where inspectorates are expected to function as an arm of immigration authorities. Enforcing migrants' rights at work requires labour inspectorates to carry out their uncompromised mandate. A 'legal firewall'²⁵ should be erected between the enforcement of immigration law and the protection of migrants' employment rights so as to enable migrants with precarious statuses to claim such rights.

Crucially, trade unions can play an essential role in organising migrants under TMWPs to expand their possibilities for exercising voice in the workplace, especially where their exit options are constrained. Migrants must be able to freely join trade unions of their own choosing, seek union assistance to enforce their rights, and collectively organise to improve their wages and conditions without the fear of jeopardising their legal status. This again points to the need for de-anchoring migrants' permission to enter and reside in the host state from a specific employer sponsorship. Moreover, unions can be a channel for overcoming workforce divisions by fostering solidarity between migrants and resident workers, more settled and new migrants, and different ethnic and racial groups. There can be an alignment of interests between migrant workers and resident workers in combating exploitative work relations that collective mobilisation and empowerment may help to achieve.

24 Carens, 'Live-in Domestic' (n 15) 425.

25 J. Carens, « The Rights of Irregular Migrants », *Ethics and International Affairs*, vol. 22, 2008, p. 167.

Trade unions themselves need to be innovative in organising and mobilising a 'temporary' migrant workforce, such as building alliances with migrant communities and civil society groups. There is also potential for transnational organising efforts between trade unions in host states and home states, with the involvement of international trade union organisations. However, the failed attempt of the European Migrant Workers Union to become a transnational organisational structure for posted migrant workers in the construction sector reveals the political limits to cross-border solidarity between national labour movements²⁶.

D - SOCIAL PROTECTIONS

Being able to access social rights and entitlements in the host state, ranging from unemployment benefits and pensions to public health, education, and housing services, can provide migrants under TMWPs and their family members with greater. However, restriction of migrants' access to social protections is often defended on the basis of maximising the 'fiscal net contribution of migrants' and minimising the 'cost' to the host state and its citizens in extending public services and welfare benefits to migrants²⁷.

However, the principle of inclusion in liberal states requires at least that if such persons are admitted as temporary members of the workforce and host society (working and living alongside permanent residents and citizens, contributing paid and unpaid labour, paying taxes, and obeying the host state's laws), they should not to be excluded from social membership benefits during their period of stay. At the minimum, the provision of 'universal' social benefits in host states such public health services and education should be available and accessible in law and in practice to migrants and their family members under TMWPs.

Carens' nuanced distinction between claims to different types of social protections that depend on the nature and purpose of such programmes is more persuasive. Based on principles of reciprocity, he maintains that temporary migrants should also be entitled to the same rights or to reimbursement for contributions to programmes that are tied to their workforce participation. Where migrant workers and their families are prevented from receiving such benefits under applicable national laws, Article 27(2) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMW) encourages state to reimburse the 'amount of contributions made by them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances'.

One feasible proposal could be that a proportion of income taxes and social security payments collected by the state from migrant workers and family members go into a special fund set up to finance their access to social benefits during their stay in the host state. To facilitate their exit from the migration project and to return home, bilateral agreements between host and home states to secure the portability of such funds would be vital protections for migrants and their families against the risks of destitution during their residence in the host state and upon their return home.

26 I. Greer, Z. Ciupijus and N. Lillie, « The European Migrant Workers Union and the barriers to transnational industrial citizenship », *European Journal of Industrial Relations*, vol. 19, 2013, p. 5.

27 Ruhs, *Price of Rights* (n 4) 47.

Temporary migrants' claims to social programmes provided by the state for the benefit of citizens may be plausibly restricted where programmes are aimed at redistribution such as income support and social housing. However, migrants' moral claims to these benefits ought to strengthen over the time of their residence in the host state. A reasonable qualification period (for example, 1-2 years) from when migrants first arrive in the host state to when they can make claims on non-contributory welfare benefits would be acceptable and consistent with the international standard on the right to social security²⁸.

E – RIGHT TO FAMILY ACCOMPANIMENT OR REUNIFICATION

Under TMWPs, there are usually restrictions on family accompaniment or reunification. Besides explicit prohibitions, there may be requirements on the migrant to demonstrate a sufficient level of income and resources to provide for family members or a qualified entitlement to apply for family reunification after a period of residence in the host state.

Any restrictions on family reunion or accompaniment would need to take into account the normative weight of the right to family life as enshrined in a plethora of international, regional, and national human rights instruments. In the specific context of migrants, Article 44.2 of the ICPRMW stipulates that 'states Parties shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses... and with their minor dependent unmarried children'. As Carens notes, 'Liberal democratic states find it difficult to justify overriding this right merely for the sake of narrow economic advantages'²⁹. If such a restriction is to be imposed under a TMWP, then the period of restriction should be as minimal as possible, such as the initial few months of the migration project with the possibility for returning home for visits.

Under the proposed model, migrants' right to family accompaniment or reunion would not be made conditional on a specific employer. Without the need to depend on a third party for the exercise of this right, there are greater possibilities for exit should migrants become trapped in abusive employment relationships and/or failing migration projects in the host state. Furthermore, family members need to be given the right to work in the resident labour market and be entitled to the social rights that have been proposed above.

F – RIGHT TO A SECURE RESIDENCE STATUS

I propose two different options that are based on the principle that migrants under TMWPs should have clear and secure legal residence status throughout their migration projects.

The first option is that TMWPs should provide a route to permanent residency that is built into the conditions of admission from the very start. If the TMWP allows for the continual renewal of migrants' visas and work permits, then they should be able to claim permanent residency after a stipulated minimum period of employment and residence in the host state. Importantly, this transition to permanent residence status should not require a specific employer's continued sponsorship and/or support. There is then the challenge

28 CESCR, General Comment n° 19, The right to social security (Art 9) (adopted 23 November 2007) U.N. Doc. E/C.12/GC/19 (2008).

29 *Ibid.*

of drawing the line of *when* temporary migrants would acquire such a 'right' to permanent residence status in legal form. The European Union³⁰ grants permanent residence status to migrants legally residing in a member state for five years.

The other alternative is to make TMWPs truly temporary by explicitly restricting the renewal of work permits and visas. As Carens argues, the 'admission of workers on a temporary basis is morally permissible, but only if the duration of their stay is truly limited... democratic states cannot keep people indefinitely in a «temporary» status'³¹. During the migrant's temporary stay in the host state, their legal status should not be compromised at the employer's discretion over the renewal or termination of their sponsorships. If migrants under TMWPs cannot be provided with independent pathways to permanent residency (that do not depend on employer sponsorship), then in my view, restricting the renewal of migrants' work permits and visas would be a 'second-best' option.

The main argument here is the indefensibility of keeping migrants in a long-term situation of precarious legal statuses, which reinforce their dependence on the employer and the extreme uncertainty of their migration projects. One may also take into account that some migrants undertake 'temporary migration projects' with no intention of ever settling in the host state but to attain the requisite earnings and experience to advance long-term life plans upon returning home³². Nevertheless, the longer this group of 'temporary' residents remain, the more likely they are to develop forms of emotional, psychological, social, cultural, and economic ties to their host society. In liberal democratic states, there is a strong moral case for these migrants to be incorporated as full members of the host state on the basis of these ties that strengthen with the passage of time.

G - RULE-MAKING, ADMINISTRATION, AND ENFORCEMENT

Finally, it is envisaged that a clear, informed, transparent, and accountable rule-making and administrative system underpinning TMWPs would help to cure some of the substantive and procedural defects that render migrants' statuses precarious. Complex, incoherent, and frequently tinkered immigration rules along with opaque and inefficient procedures can increase the likelihood of inadvertent breaches by employers and migrants. As Anderson puts it, 'the contradiction is therefore that in a bureaucratic and inevitably complex system of control, the state may perversely lose control over migration by creating greater numbers of overstayers, people working in breach of conditions, and illegal entrants'³³.

Crucial to helping migrants make informed and considered choices about their migration projects is the provision with reliable information regarding the TMWP itself, working and living conditions, employment laws and protections, and relevant immigration rules. In practice, migrants seek such information from employers, labour market intermediaries, and other sources in their networks including friends, families, and other migrants. Yet, the information given can often be deliberately or unintentionally inaccurate. Migrants can also become dependent on one or two sources of information. Therefore

30 Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.

31 J. Carens, *The Ethics of Immigration*, Oxford, OUP, 2013, p. 113.

32 Ottonelli and Torresi (n 17).

33 Anderson (n 3) p. 311.

there is a need for mechanisms for offering accurate and up-to-date information (in their own language), which migrants can access to help them to make more informed decisions regarding their migration projects and facilitate their exit and voice options.

Conclusion

In designing TMWPs, policymakers in liberal democratic states must grapple with a range of normative and ethical issues. The influential 'numbers versus rights' thesis has largely reflected a utilitarian approach that is based on cost-benefit considerations for the host state. Notable proposals for 'new' and 'redesigned' TMWPs have entailed granting migrants a small set of 'core' rights while restricting a wider range of other rights. However, such proposals require a substantive normative foundation for identifying and justifying exactly what those 'core' and 'non-core' rights are.

Recourse to exit and voice mechanisms at any stage of migrants' work relations and their migration projects underpins the proposals for reform that have been put forward in this paper. The proposals further seek to embrace the 'aspirations and projects of the migrants themselves, as actors and purposive participants'³⁴ in TMWPs. Considering the strong push-pull factors driving global labour migration, the use of TMWPs is unlikely to cease in the near future. I have focused on reforming current TMWPs, rather than advocating for their immediate elimination in favour of zero-migration or permanent settlement policies. Rather than laying out a blueprint for a 'triple-win' TMWP, it is hoped that the above proposals can direct the attention of policymakers in liberal democratic states to the normative legitimacy and practical feasibility of protecting migrants against extreme precariousness in and beyond the workplace.

34 Ottonelli and Torresi (n 17) p. 208.

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~ M. Zou, «The Regulatory Challenges of "Uberization" in China: How to Classify Ride-Hailing Drivers?», *International Journal of Comparative Labour Law and Industrial Relations*, 2017, n° 33, p. 269.

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